

# FOREIGN INVESTMENT BOARD

P. O. BOX 1733  
KOROR, PALAU PW 96940  
PHONE NO. (680) 488-1135/2073  
FAX NO. (680) 488-3722  
EMAIL: [fibpalau@palaunet.com](mailto:fibpalau@palaunet.com)

## REGULATIONS IMPLEMENTING THE FOREIGN INVESTMENT ACT, 28 PNC SECTION 101 *et seq.*

### CHAPTER ONE ADMINISTRATION AND ENFORCEMENT

#### PART 1: GENERAL PROVISIONS

Section 1: **Purpose.** The Foreign Investment Board seeks in its implementation, administration and enforcement of the Foreign Investment Act, 28 PNC Section 101 *et seq.*, to encourage investment in the Republic by non-citizen persons and business enterprises at a rate and on terms that will benefit the people of the Republic and maximize their opportunities to participate fully in the economic growth resulting from such investment. These regulations are promulgated to carry out the purposes of the Foreign Investment Act, which is intended to attract to the Republic significant foreign investment and foreign business activities that will provide meaningful employment opportunities for Palauan citizens. These regulations also are promulgated to clarify the enforcement mechanisms of the Foreign Investment Act which are intended, at least in part, to prevent circumvention of the law by persons "acting as fronts for foreigners who seek to avoid the scrutiny of the [Foreign Investment] Board." *See* Stand. Com. Rep. No. 3-131, April 10, 1990 at 2. Finally, these regulations set forth certain procedures required of the Foreign Investment Board by the Administrative Procedures Act, 6 PNC Section 101 *et seq.*

Section 2: **Authority.** These regulations have been adopted by the Foreign Investment Board pursuant to Sections 108(b) and 117 of the Foreign Investment Act.

Section 3: **Effective Date.** The revisions set forth herein shall take effect thirty (30) days after the date of adoption by the Foreign Investment Board, unless otherwise provided. Failure by a non-citizen business enterprise to comply with applicable regulatory and statutory foreign investment requirements renders that business enterprise subject to criminal prosecution by the Attorney General or the Special Prosecutor.

#### PART 2: DEFINITIONS AND ABBREVIATIONS

Section 1: **Definitions.** The following definitions of terms which appear in the Foreign Investment Act but which are not separately defined, shall apply:

- (a) *established in the Republic* as set forth at Section 102(c) means that a business enterprise maintains a physical presence in the Republic. Physical presence in the Republic includes, but is not limited to the following:
  - (i) operating or establishing an office, store, restaurant, hotel, shop, factory, workshop, plant, warehouse or other such facility;

- (ii) hiring, appointing, designating, or sending a representative, distributor or agent who is present in the Republic for more than 30 days in any calendar year transacting business on behalf of the business enterprise;
  - (iii) undertaking building, construction or assembly projects;
  - (iv) importing items for resale;
  - (v) paying taxes to the Republic;
  - (vi) hiring employees;
  - (vii) obtaining national or state business licenses; and
  - (viii) performing any other such act or series of acts in the Republic which are sufficient to the subject the business enterprise to the personal jurisdiction of the Courts of the Republic.
- (b) *a contract with the national government* as set forth at Section 102(c) means a contract entered into in compliance with all applicable procurement laws and regulations to which a particular non-citizen person or business enterprise and the National Government of the Republic are the sole and exclusive parties. Similarly, *a contract or an agreement to which the national government of the Republic is a party* as set forth at Section 103(d) means a contract entered into in compliance with all applicable procurement laws and regulations to which a particular non-citizen person or business enterprise and the National Government of the Republic are the sole and exclusive parties. If the non-citizen person or business enterprise party to the contract with the national government subcontracts with another non-citizen person or business enterprise to perform a portion of the contract, the subcontractor shall be considered a party to the contract for purpose of the subcontract only. A non-citizen person or business enterprise shall provide a copy of such a *contract with the national government* upon the request of the Foreign Investment Board, the Attorney General or the Special Prosecutor.
- (c) *owner* as set forth at Section 102(d) means a person, whether natural or legal, who contributes all of the financing and/or tangible assets expended to commence or carry on a business enterprise established in the Republic.
- (d) *part-owner* as set forth at Section 102(d) means a person or persons, whether natural or legal, who contributes any portion of the financing and/or tangible assets expended to commence or carry on a business enterprise established in the Republic.
- (e) *the lending of money by a non-citizen to a business enterprise or individual* as set forth at Section 103(b) means the lending of a specified amount of money by a non-citizen person, whether natural or legal, to a person or business enterprise established in the Republic, pursuant to a repayment schedule and at an interest rate agreed upon in writing by the non-citizen lender and the borrower; provided, however, that the non-citizen lender shall have no ownership interest in, management authority or control over, or employment relationship to the borrower. The non-citizen and/or the borrower shall be required to provide written verification of such *lending of money by a non-citizen to a business enterprise or individual* upon the request of the Foreign Investment Board, the Attorney General or the Special Prosecutor.
- (f) *approval for such new activity* as set forth at Section 103(c) means formal approval from the Foreign Investment Board in the form of either an amendment to a non-citizen business enterprise's existing foreign investment approval certificate or the issuance of a separate foreign investment approval certificate for the new activity. As applied to non-citizen business enterprises currently operating under the terms of a foreign business permit, *approval for such new activity*

means formal approval from the Foreign Investment Board by issuance of a new foreign investment approval certificate for each such new activity.

- (g) *decisions requiring* a vote as set forth at Section 104(e) include:
- (i) a decision whether to approve or deny an application for a foreign investment approval certificate;
  - (ii) a decision whether to approve or deny a request for an amendment to a foreign investment approval certificate;
  - (iii) a decision whether to approve or deny an application to renew a foreign investment approval certificate or a foreign business permit;
  - (iv) a decision whether to approve or deny a request for a statement of non-objection
  - (v) a decision whether to approve or deny a request for reconsideration
  - (vi) a decision whether to modify, suspend or revoke a foreign investment approval certificate;
  - (vii) a decision whether to adopt, amend or repeal a rule of regulation;

Section 2: *Abbreviations.* As used in these regulations, unless the context requires otherwise, the abbreviations:

- (a) *the Act* shall refer to the Foreign Investment Act, 28 PNC Section 101 *et seq.*
- (b) *the APA* shall refer to the Administrative Procedures Act, 6 PNC Section 101 *et seq.*
- (c) *FIB* shall refer to the Foreign Investment Board established pursuant to Section 104 of the Act.
- (d) *FIAC* shall refer to a Foreign Investment Approval Certificate granted pursuant to Section 108 of the Act.

### PART 3: FIAC APPLICATION REQUIREMENTS

Section 1: *Form of Application.* The form of application submitted by all applicants for an FIAC shall be specified by the FIB and made available to citizens and non-citizens alike, upon request. Whenever practical, such form shall be available electronically.

Section 2: *Local Ownership Requirement (28 PNC Section 105).*

- (a) The local ownership requirement set forth in Section 105 of the Act regulates the ownership structure of a business enterprise only and does not prohibit the employment of non-citizens by business enterprises established in the Republic and lawfully engaged in the enumerated business activities.
- (b) To determine whether an application falls within the list of business activities reserved exclusively for citizens and businesses wholly-owned by citizens as set forth at Section 105(a), (b), (f), (g) and (j) of the Act (as amended in R.P.P.L 4-10, effectively January 1, 1994), the following definitions shall apply:

- (i) *wholesale or retail sale of goods* as set forth at Section 105(a) means the operation by a business enterprise established in the Republic of an outlet for the wholesale or retail sale of perishable or non-perishable goods, including but not limited to the wholesale or retail sale of food, beverages, clothing, shoes, jewelry, books, magazines, amusements, office supplies, hardware, furniture, house wares, photographs, souvenirs, fitness equipment, automobiles, watercraft or any other such nonperishable products;
  - (ii) all land transportation including bus services, taxi services and car rentals as set forth at Section 105(b) means the provisions of bus services, taxi services and automobiles for hire by a business enterprise established in the Republic according to a fee schedule;
  - (iii) *tour guides, fishing guides, diving guides and any other form of water transportation services* as set forth at Section 105(f) means the provision of water tour, fishing, diving and intra-state or inter-state water transportation services for hire by a business enterprise established in the Republic according to a fee schedule but does not include the bareboat charter of yachts, boats, kayaks, canoes, jet skis, windsurfers, or other such watercraft. For purposes of these regulations, a bareboat charter means that the owner or owners of a watercraft registered and maintained in a country other than the Republic grant to the charterer established in the Republic pursuant to a written instrument and for a specified term and fee, the exclusive right, responsibility and liability of controlling, operating, and navigating the watercraft within the territorial waters of the Republic and simultaneously relinquish all such right, responsibility and liability. If the owner or owners of the watercraft retain any control whatsoever (either personally or through the agents, representatives or employees of the owner or owners) over the operation or navigation of the watercraft while it is in the territorial waters of the Republic, the arrangement does not qualify as a bareboat charter.
  - (iv) *travel and tour agencies* as set forth at Section 105(g) means a business enterprise established in the Republic for the purpose of scheduling, arranging, or otherwise facilitating travel or tour arrangements within the Republic.
  - (v) Commercial fishing for other than highly migratory species as set forth at Section 105(j) means fishing within the territorial waters of the Republic for any fish or marine life, with the exception of all species of tuna, marlin and all other migratory species, for the purpose of selling any resulting catch.
- (c) To determine whether an application falls within the list of businesses reserved for citizens or business enterprises in which citizens have an ownership interest as set forth at Section 105(c), (d), (e), (h) and (I) if the Act, the following definitions shall apply:
- (i) *handicraft and gift shops* as set forth at Section 105(c) means the establishment by a business enterprise established in the Republic of a retail outlet for the sale of handicrafts and gifts.
  - (ii) *bakeries* as set forth at Section 105(d) means the operation by a business enterprise established in the Republic of a facility designed for the exclusive purpose of creating, producing and selling breads, cakes, pies, pastries, cookies, donuts and other such baked goods to wholesalers, retailers or the general public.

- (iii) *bar services* as set forth on Section 105(e) means the sale of alcoholic beverages to the general public for on-site consumption at a facility operated by a business enterprise established in the Republic.
- (iv) *operations [selling] products being produced by wholly Palauan-owned manufacturing enterprises* as set forth at Section 105(h) means the operation of a retail outlet by a business enterprise established in the Republic for the sale of items produced by wholly Palauan-owned manufacturing enterprises.
- (v) *equipment rentals for both land and water within the Republic, including equipment for purpose of tourism* as set forth at Section 105(I) means the rental of land transportation items such as busses, minivans, motorcycles, mopeds, bicycles, or other such vehicles and the rental of boats, kayaks, canoes, jet-skis, wind surfers, or other such watercraft by a business enterprise established in the Republic according to a fee schedule, but does not include the rental of automobiles, which is covered under Part 3, Section 2(a)(ii) of these regulations. The rental of such equipment shall not include the provision of any tour services by the owner, part-owners, managing agents, employees or representatives of the business enterprise established in the Republic as such services are covered under Part 3, Sections 2(b)(ii) of these regulations.
- (vi) *any such other businesses as the Board may determine* as set forth at Section 105(k) means any other such business activities as are identified by the FIB pursuant to regulations promulgated in accordance with the APA..

Section 3: *Minimum Investment Requirement.* To determine whether an FIAC application satisfies the requirement set forth at Section 106 of the Act that it involves either a capital investment of no less than \$500,000.00 or a workforce of at least 20% Palauan citizens, the FIB shall consider:

- (a) the total anticipated foreign investment during the first full year of operation of the business enterprise in the Republic--the investment may be in cash or in kind, but the source of the amounts to be invested in cash must be identified in the application and the amounts to be invested in kind must be identified and documentary evidence of value must be attached to the application; or
- (b) the total anticipated workforce to be employed beginning in the first full year of operation of the business enterprise in the Republic--the business enterprise must provide to the FIB no later than six months after the issuance of its FIAC written evidence in the form provided by the FIB, that at least 20% of its workforce are Palauan citizens. Failure to provide such evidence renders the FIAC subject to modification, suspension or revocation under Section 112(d) of the Act and Part 10 of these regulations.
- (c) When evaluating an FIAC application in light of the requirements set forth in Section 106 of the Act and this section, the FIB will favor proposals which meet or exceed both the \$500,000.00 capital investment and 20% Palauan employment criteria.

Section 4: *Specific Criteria for Evaluation of FIAC Applications (Section 107).*

- (a) As required by Section 104(i), this subsection sets forth specific criteria to be applied by the FIB when evaluating FIAC applications pursuant to Section 107. In applying these criteria, the FIB may request a letter of opinion from one or more government agencies or private entities qualified to assess the impact of the non-citizen's proposed business

activities in a particular subject area. If such government agency or private entity requires additional information from the applicant in order to render an assessment, the applicant shall have fifteen (15) days from receipt of such notification from the FIB to provide the additional information.

- (i) *The economic need for the proposed activity in the Republic (Section 107(a)(1))*: the FIB shall consider the overall impact of the FIAC applicant's proposed business activity on the national economy, including its potential impact on the balance of payments, gross island product, national income accounts, and per capita real income. The FIB shall disfavor FIAC applications for business activities which will diminish these measures of national economic well-being. The FIB shall also consider the extent of goods or services to be provided, the potential integration of the proposed business activity into the local business community, the amount of taxes to be paid, the number of Palauan citizens to be employed, and all other foreseeable contributions of the proposed business activity to the economy of the Republic. The FIB will favor FIAC applications which feature capital-intensive business activities not currently available in the Republic and which will provide immediate and financially rewarding employment opportunities for Palauan citizens.
- (ii) *The extent of its current availability in the Republic (Section 107(a)(2))*: the FIB shall analyze the extent to which the specific business activity proposed by the FIAC applicant currently is available in the Republic. As set forth at Section 107(b) of the Act and at Part 3, Section 5(b) of these regulations, the FIB shall deny an FIAC application of the proposed business activity is *within the capacity of citizens*.
- (iii) *the likely impact on same or similar activities being currently carried on by citizens (Section 107(a)(3))*: the FIB shall evaluate whether the FIAC applicant's proposed business activity is likely to have a significantly negative competitive impact on the same or substantially similar activities currently carried on by citizens. The FIB will favor FIAC applications will provide goods or services not currently available in the Republic.
- (iv) *the overall benefit to the national economy (Section 107(a)(4))*: see Section 4(a)(i), above.
- (v) *the bona fides, financial capacity, experience and expertise of the applicant (Section 107(a)(5))*: the FIB shall require that the FIAC applicant submit sufficient evidence, documentation or testimony under penalty or perjury to establish that the applicant possesses or has access to sufficient financial resources or tangible assets to capitalize the proposed business activity and has sufficient prior experience and expertise in the same or similar business activities. The FIB also shall require all owners, part-owners and managing agents of the FIAC applicant to provide copies of their passports, a police clearance from their home country or country of residence, and a resume which includes all work experience and educational background; provided, however, that where the applicant is a publicly-held corporation or is owned by ten (10) or more persons, the FIB may elect to require this information from the officers and directors or other representatives of the non-citizen business enterprise. If the FIB determines on the basis of such information that an applicant is not financially or technically capable of conducting the proposed business activity, or that the applicant may pose a threat to the public health, safety or welfare, it shall deny the application.

- (vi) *the technical and economic viability of the proposed project (Section 107(a)(6))*: the FIB shall require that the FIAC application submit sufficient evidence, documentation or testimony under penalty of perjury to establish that the proposed business activity is technically and economically viable in that the applicant is ready and able to commence its business within one year of the date of issuance of the FIAC. The FIB will favor FIAC applications which demonstrate the ability to commence business activities immediately subsequent to the issuance of the FIAC.
  - (vii) *the overall contributions to the national economy (Section 107(a)(7))*: see Section 4(a)(i) above.
  - (viii) *the extent of direct and indirect employment generation (Section 107(a)(8))*: the FIB shall analyze the extent to which the FIAC applicant's proposed business enterprise will employ (or have the effect of encouraging other businesses to employ) Palauan citizens. The FIB will favor FIAC applications which commit to compensating and training employees at a rate and in a manner that will attract qualified Palauan citizens. The FIB will disfavor FIAC applications for labor-intensive businesses that will rely on the utilization of non-citizen labor.
  - (ix) *the external of [export] earnings or import savings (Section 107(a)(9))*: the FIB shall evaluate the extent to which the FIAC applicant's proposed business activity will either increase net export earnings or contribute to net import savings. The FIB will favor FIAC applications which will result in import substitution, thereby reducing the outflow of currency as well as the dependence of Palauan residents on imported goods and services.
  - (x) *the extent of utilization of domestic raw materials and natural resources, including the benefits or adverse impact of such utilization (Section 107(a)(10))*: The FIB shall determine whether an FIAC applicant's proposed business activity will have a significant impact on the Republic's domestic raw materials and natural resources. The FIB will favor FIAC applications which either have a negligible impact or which will affirmatively preserve domestic raw materials and natural resources.
  - (xi) *the extent of transfer of managerial and technical skills to citizens, including well-defined training programs for achieving such transfer (Section 107(a)(11))*: The FIB shall require that the FIAC applicant submit a detailed written description of the program(s) it intends to implement within its business enterprise in order to transfer managerial and technical skills to its Palauan employees. The FIB will favor FIAC applications which commit to such a transfer of skills to Palauan employees.
  - (xii) *The impact of the proposed activity upon the social and cultural values and upon the environmental integrity of the Republic (Section 107(a)(13))*: The FIB shall determine whether an FIAC applicant's business activity will have a significant impact on social and cultural values or upon the environmental integrity of the Republic. The FIB will favor FIAC applications which actively promote traditional Palauan culture and protect the pristine natural environment.
- (b) When implementing Section 107(b) of the Act, in light of the evolving nature of the Palauan economy, the FIB shall determine whether a particular business activity is *within the capacity of citizens* on a case-by-case basis provided, however, that at least one business enterprise wholly-owned by Palauan citizens actively is engaged in the specific business activity applied for by the FIAC applicant.

#### PART 4: FIB EVALUATION OF FIAC APPLICATIONS

Section 1: *Application Procedure and Fee*. Each application by a non-citizen for an FIAC shall be made to the Chairman and shall be accompanied by a non-refundable \$500.00 application fee and (15) copies of the application.

Section 2: *FIB Receipt of the Application*. Upon receipt of an FIAC application, the Executive Officer of the FIB shall review the application to determine whether it contains all of the required information:

- (a) if the application is incomplete, the Executive Officer shall so notify the Chairman within seven (7) days of receipt of the application. The Chairman then shall notify the applicant in writing within seven (7) days of such notification and require that the applicant complete the application and furnish such additional information as may be required for a proper evaluation of the application. Failure by the applicant to provide such information within the timeframe requested shall constitute an abandonment of the application;
- (b) if the application is complete, the Executive Officer shall so notify the Chairman within seven (7) days of receipt of the complete application. The Executive Officer shall circulate the application to the offices specified at Section 108(g) of the Act within fifteen (15) days of receipt of the complete application to each of the following and request that they provide their written comments, if any, within the next fifteen (15) days. A lack of response by such offices shall constitute approval of the FIAC application.

Section 3: *Meeting of the FIB*. No later than thirty (30) days after the receipt of a complete FIAC application, the Chairman shall include consideration of such application on the notice of the next regularly scheduled FIB meeting. At this meeting, the FIB shall:

- (a) evaluate the application and any comments received pursuant to the criteria set forth at Section 108(g) of the Act and Part 3, Section 5 of these regulations; and
- (b) determine whether it should call for additional information, seek expert advice, or make additional investigation as may be necessary for a proper evaluation of the application. If the FIB decides that such information, advice or investigation is warranted, it shall direct the Chairman to take appropriate action to so notify the applicant in writing within seven (7) days of the meeting date. All such information, advice or investigation must be obtained or concluded no later than sixty (60) days after receipt of the complete FIAC application.

Section 4: *Notice of Personal Appearance*. If it considers it necessary to its evaluation of the FIAC application, the FIB may afford the applicant an opportunity to appear before the Members during and FIB meeting to explain the proposed business activity.

Section 5: *Notification of Decision*. The FIB shall issue a decision on any FIAC application no later than 90 days after receipt of the complete FIAC application.

#### PART 5: FIAC TERMS AND CONDITIONS

Section 1: *Purpose*. Pursuant to Section 108(k) of the Act, the FIB shall set the terms and conditions of each FIAC that it issues, including but not limited to the terms and conditions described in this Part. Failure by a non-citizen business enterprise to comply with the terms and conditions of its FIAC renders that FIAC subject to modification, suspension or revocation pursuant to Section 112 of the Act and Part 10 of these regulations.



Section 2: *Duration*. The FIB shall set the duration of each FIAC, and said duration cannot be greater than 50 years. The specific term set for a particular FIAC shall be similar to those previously issued to non-citizen business enterprise engaged in the same or similar activities and shall bear a reasonable relationship to the amount of capital invested by the business enterprise in the Republic.

Section 3: *Scope*. The FIB shall define the scope of business activity permitted as a term of each FIAC. The FIB shall not issue an FIAC for a range of business activities that are substantially different or unrelated to each other; in such circumstances, the non-citizen business enterprise must obtain separate FIACs for each such business activity.

Section 4: *Citizen Participation*. Where a non-citizen business enterprise qualifies under Section 106 of the Act for an FIAC on the ground that its workforce will include at least 20% Palauan citizens, the FIB shall require as a condition of the FIAC that the non-citizen business enterprise provide written documentation in the form attached as Appendix II to these regulations to the FIB within six (6) months of issuance of the FIAC to certify that it workforce meets the minimum employment requirement. In addition, the FIB shall require all non-citizen business enterprises to:

- (a) utilize their best efforts to hire Palauan citizens and to promote them into the management and/or ownership of the business enterprise; and
- (b) provide a training program to upgrade the technical and managerial skills of its Palauan employees.

Section 5: *Bank Deposit*. The FIB may require as a condition of an FIAC that the non-citizen business enterprise deposit and maintain a stipulated amount of money at the branch office of any United States FDIC-insured bank established in the Republic. If the FIB imposes such a condition, then the FIB shall require that the non-citizen business enterprise provide written documentation in the form to be provided by the FIB, within 60 days of issuance of the FIAC to certify that it has satisfied this requirement.

Section 6: *Minimum Wage and Annual Non-Citizen Employment Fee*. Subject to the exemptions set forth at Section 108 of the Act, the FIB shall require as a condition of an FIAC that:

- (a) a non-citizen business enterprise shall pay its employees a minimum wage that is at least equivalent to the minimum wage paid by the National Government; and
- (b) a non-citizen business enterprise shall pay to the National Treasury an annual fee of \$500.00 for each non-citizen that it employs. For the purpose of these regulations, a non-citizen shall be considered employed by a non-citizen business enterprise if he or she is hired by, leased by, under contract to, working on the premises of, or otherwise working in the Republic in support of the non-citizen business enterprise. Written evidence of the names, job titles, work permit numbers and expiration dates and citizenship of all non-citizen workers in the form provided by the FIB, and proof of the payment of the fee for each such non-citizen shall be submitted to the FIB within thirty (30) days of the employment of each such non-citizen. These fees are due annually, regardless of the duration of the work permit of the subject employee.

Section 7: *Utilization of Domestic Raw Materials and Natural Resources*. If the FIB determines that a non-citizen business enterprise's business activities will have a significant impact on any of the Republic's raw materials or natural resources, the FIB shall specify the scope of utilization of such materials or resources as a term of the FIAC.

Section 8: *Utilization of Supplies and Services Provided by Citizens*. The FIB shall require that a non-citizen business enterprise utilize supplies and services provided by citizens of the Republic wherever economically feasible and practicable.

Section 9: *Quarterly Reports*. The FIB shall require as a condition of any FIAC it issues that the non-citizen business enterprise submit quarterly reports to the FIB within thirty (30) calendar days of each of the following dates each year: March 31, June 30, September 30 and December 31. In addition, non-citizen business enterprises currently operating under the terms of foreign business permits are required to submit such reports in order to facilitate the FIB's monitoring and enforcement responsibilities. Such reports shall be made in the form provided by the FIB.

Section 10: *Statement of Non-Objection*. The FIB shall require as a condition of any FIAC it issues that a non-citizen business enterprise:

- (a) notify the FIB at least thirty (30) days in advance if any Palauan shareholder seeks to transfer some or all of his or her shares in the grantee to a non-Palauan, or if any non-Palauan shareholder seeks to transfer some or all of his or her shares in any way; and
- (b) obtain a written statement of non-objection from the FIB. The FIB may require as part of its consideration of a request for a statement of non-objection that the non-citizen business enterprise provide copies of certified financial statements, passports, police clearances, resumes and other evidence of financial and professional experience from the proposed new shareholders.

## PART 6: REPORTING REQUIREMENTS

Section 1: *Annual Reports*. The Registrar of Corporations shall forward to the FIB a copy of the annual report submitted to the Registrar of Corporations by each and every non-citizen business enterprise established in the Republic.

Section 2: *Quarterly Reports*. All non-citizen business enterprises must submit quarterly reports to the FIB on the form provided by the FIB, along with a non-refundable \$25.00 filing fee. A \$25.00 penalty fee will be assessed for reports filed after the required date. Failure by a non-citizen business enterprise to timely submit quarterly reports may render its Foreign Business Permit or FIAC subject to modification, suspension or revocation pursuant to Section 112 of the Part and Part 10 of these regulations.

Section 3: *FIB Investigation*. The FIB and/or its designee(s) shall review the annual and quarterly reports. If, on the basis of such review or any other information provided to or otherwise in the possession of the FIB, the FIB concludes that a non-citizen business enterprise may have committed a breach of the Act or of the terms and conditions of an FIAC or foreign business permit, the FIB and/or its designee(s) shall investigate the matter further. The FIB and/or designee(s) may require that the non-citizen business enterprise provide additional written information; may interview the owners, representatives, employees and other persons with knowledge of the non-citizen business enterprise; and may conduct spot inspections of the business premises. If, on the basis of such investigation, the FIB concludes that a non-citizen business enterprise has breached any provision of the Act or these regulations, any provision of any other law or regulation of the Republic, or any of the terms and conditions of its FIAC or foreign business permit, the FIB may:

- (a) direct the non-citizen business enterprise in writing to rectify the breach immediately and to provide the FIB with written documentation of such rectification within thirty (30) days;
- (b) modify, suspend or revoke the non-citizen business enterprise's FIAC or foreign business permit;
- (c) refer the matter to the Attorney General or Special Prosecutor for criminal prosecution.

Section 4: *Failure to Submit Required Reports.* Failure by a non-citizen business enterprise to comply with the reporting requirements set forth in this Part will render its FIAC or foreign business permit subject to modification, suspension or revocation pursuant to Section 112 of the Act and Part 10 of these regulations.

## PART 7: FIAC AMENDMENT PROCEDURE

Section 1: *Form of FIAC Amendment Application.* As required by Section 110(2) of the Act, the form of application for an amendment to the terms and conditions of an FIAC shall be the FIAC application form, or such other form as the FIB may require.

Section 2: *FIAC Amendment Procedure and Fee.* Each application to amend an FIAC shall be made to the Chairman and shall be accompanied by a non-refundable \$100.00 application fee and fifteen (15) copies of the application. Pursuant to Section 110(a) of the Act, the FIB shall not issue an amendment to an FIAC which would permit a non-citizen business enterprise to engage in any activity which is substantially different or unrelated to that set forth in the original FIAC. The procedure set forth at Part 4 of these regulations concerning FIB evaluation of FIAC applications shall govern FIB evaluation of applications for an FIAC amendment.

Section 3: *Foreign Business Permit.* Foreign business permits shall not be amended but rather shall expire at the conclusion of their term without modification. A non-citizen business enterprise operating in the Republic under the terms of a foreign business permit must apply for an FIAC if it seeks to amend any of the terms or conditions of its foreign business permit.

## PART 8: FIAC RENEWAL PROCEDURE

Section 1: *Form of FIAC Renewal Application.* The form of application for renewal of an FIAC shall be the FIAC application form..

Section 2: *FIAC Renewal Procedure and Fee.* Each application to renew an FIAC shall be made to the Chairman at least ninety (90) days prior to the FIAC expiration date and shall be accompanied by a non-refundable \$500.00 application fee and fifteen (15) copies of the application. The procedure set forth at Part 4 of these regulations concerning FIB evaluation of FIAC applications shall govern FIAC renewal applications.

Section 3: *Renewal of Foreign Business Permits.* This Part also governs the renewal of foreign business permits: at least ninety (90) days prior to expiration of its foreign business permit, a non-citizen business enterprise must apply for an FIAC according to the requirements of the Act and these regulations in order to continue its business activities in the Republic.

Section 4: *Effect of Local Ownership Requirement (Section 105 of the Act) on the Renewal of an FIAC or Foreign Business Permit.* The FIB shall not grant an FIAC renewal application for any of the business activities set forth at Section 105(a), (b), (f), (g), and (j) of the Act, and more specifically defined at Part 3, Section 2(b) of these regulations, as these activities have been reserved by the Olbiil Era Kelulau in R.P.P.L. 4-10 (effective January 1, 1994) exclusively for Palauans and business enterprises wholly-owned by Palauan citizens. The FIB may grant an FIAC renewal application for any of the business activities set forth at Section 105(c), (d), (e), (h), and (i) of the Act, and more specifically defined at Part 3, Section 2(c) of these regulations, provided that the non-citizen business enterprise meets the ownership interest criteria of Section 105 of the Act.

## PART 9: REQUEST FOR RECONSIDERATION

Section 1: *Form of Request for Reconsideration.* The form of a request for reconsideration shall be in the form of a letter to the Chairman setting forth in detail the grounds for such a request and any additional information as the requesting party believes may be of assistance to the FIB in evaluating the request.

Section 2: *Request for Reconsideration Procedure and Fee.* Each request for reconsideration shall be made to the Chairman and ten (10) copies of the request. A non-citizen business enterprise must submit a request for reconsideration within thirty (30) days of any FIB decision or action which the requesting party contends has directly and adversely affected its legal rights. Upon receipt of a request for reconsideration, the Executive Officer of the FIB shall so notify the Chairman within seven (7) days.

Section 3: *Notice of Hearing.* No later than fifteen (15) days after receipt of a request for reconsideration, the Chairman shall serve notice upon all interested parties of a hearing which shall be conducted at the FIB office within the next thirty (30) days. The date for such a hearing shall only be extended by the FIB upon written request of the non-citizen business enterprise seeking the reconsideration and or good cause shown. This notice shall be in the form proscribed by Section 141 of the APA..

Section 4: *Hearing Procedure.* The hearing concerning any request for reconsideration shall be conducted by the FIB according to the procedures set forth at Section 142, 143 and 145 of the APA.

Section 5: *Notification of a Final Decision.* The FIB shall issue a final decision on a request for reconsideration within thirty (30) days of the conclusion of the hearing. The final decision shall be in the form proscribed at Section 144 of the APA.

Section 6: *Judicial Remedy.* A non-citizen business enterprise aggrieved by the final decision of the FIB is entitled to judicial review of the decision pursuant to Section 147 of the APA.

Section 7: *Informal Settlements.* At any time prior to the commencement of a hearing pursuant to Section 3 of this Part, the requesting party of the FIB may propose in writing an informal settlement of issues underlying the request for reconsideration. The FIB or the requesting party shall meet at the FIB offices within seven (7) days of the date of the written proposal to discuss an informal settlement. If an informal settlement is not agreed upon by the FIB and the requesting party within seven (7) days of the meeting date, then the procedures set forth in this Part governing requests for reconsideration shall apply.

## PART 10: FIAC MODIFICATION, SUSPENSION OR REVOCATION

Section 1: *Authority.* The FIB shall initiate proceedings to modify, suspend or revoke an FIAC or a foreign business permit pursuant to Section 112 of the Act if it is satisfied that a non-citizen business enterprise may have:

- (a) submitted false or fraudulent information in its application for an FIAC or foreign business permit;
- (b) presented false or fraudulent information to the FIB in support of its application for an FIAC or foreign business permit;
- (c) engaged in bribery or unlawful influence or coercion in connection with its application for an FIAC or foreign business permit;
- (d) violated any provision of the Act or any other law or regulation of the Republic;
- (e) violated any of the terms or conditions of its FIAC or foreign business permit;
- (f) carried on a business activity or make a foreign investment outside the scope of its FIAC or foreign business permit.

Section 2: *Notice of Hearing.* Prior to taking any action under Section 112 of the Act, the Chairman shall notify the non-citizen business enterprise that a hearing concerning its intent to modify, suspend or revoke the FIAC or a foreign business permit will be conducted at the FIB office within the next thirty (30) days.

The notice shall state all grounds upon which the FIB may take such action. The date for such a hearing shall only be extended by the FIB upon a written request of the non-citizen business enterprise and for good cause shown.

Section 3: *Hearing Procedure*. At the hearing concerning the FIB's intent to modify, suspend or revoke an FIAC or foreign business permit, the non-citizen business enterprise shall be afforded the opportunity to present its case and to demonstrate whether it has complied with all lawful requirements to retain its FIAC or foreign business permit.

Section 4: *Notification of a Final Decision*. The FIB shall issue its decision whether to modify, suspend or revoke an FIAC or foreign business permit within thirty (30) days of the conclusion of the hearing.

Section 5: *Reconsideration*. A non-citizen business enterprise is entitled to seek reconsideration of the FIB's decision to modify, suspend or revoke an FIAC or foreign business permit pursuant to Part 9 of these regulations.

#### PART 11: PETITION FOR FIB ADOPTION, AMENDMENT OR REPEAL OF A RULE OR REGULATION

Section 1: *Petition Procedure and Fee*. Any person is entitled to submit a petition in writing, requesting the FIB to adopt, amend or repeal a rule or regulation. Each such petition shall be made to the Chairman and shall be accompanied by ten (10) copies of the petition. Upon receipt of a petition, the Executive Officer immediately shall so notify the Chairman, who shall include the petition for consideration on the agenda for the next FIB meeting.

Section 2: *Meeting of the FIB*. No later than seven (7) days after submission of the petition, the FIB shall

- (a) meet to evaluate the petition in light of the requirements of the Act and the FIB's responsibility to apply, administer and enforce these requirements; and
- (b) determine whether it should call for additional information from the petitioner or other persons or seek any expert advice. If the FIB decides that such information or advice is warranted, it shall direct the Chairman to take appropriate action. All such information or advice must be obtained within fifteen (15) days of the meeting date.

Section 3: *Notice of Personal Appearance*. If it considers it necessary to its evaluation of the petition, the FIB may afford the petitioning party an opportunity to appear before the Members to explain the reasons for the petition.

Section 4: *Notification of Decision*. No later than thirty (30) days after the receipt of a petition, the FIB shall either:

- (a) deny the petition in writing and state its reasons for the denial; or
- (b) initiate the appropriate rule-making procedure in accordance with the requirements of the APA.

CHAPTER TWO  
POLICIES AND PROCEDURES OF THE FOREIGN INVESTMENT BOARD

PART 1: CODE OF ETHICS

Section 1: *Purpose.* The FIB was established by the Olbiil Era Kelulau as a part of the executive branch of the National Government to administer, implement and enforce the Act. The FIB specifically is authorized to review, evaluate and approve or deny applications for FIAC's; to monitor and investigate and enforce compliance with the terms and conditions of such FIAC's, foreign business permits, and the Act; to advise the President of the Republic and the Olbiil Era Kelulau on matters relating to implementation and improvement of the Act; and to undertake such other matters as may be entrusted to it by the President. To effectively discharge these duties, the FIB must remain insulated from political, financial or any other private interference and its official conduct must be above reproach. Accordingly, while serving on the FIB, each Member has the solemn obligation to perform his or her duties in conformity with the Code of Ethics set forth herein and with any applicable laws and regulations promulgated by the Republic. Each Member of the FIB therefore agrees to be bound by the following Standards of Conduct.

Section 2: *Standard of Conduct.*

- (a) Each Member shall perform his or her duties in accordance with all applicable laws and regulations of the Republic.
- (b) Each Member shall avoid any situation that does or may possibly involve a conflict of interest. A conflict of interest shall mean any matter before the FIB in which a Member has an actual or potential economic interest such as may create the appearance of impropriety. A Member shall be deemed to have an economic interest concerning a matter before the FIB if he or she or relative is an owner, in whole or in part, of a non-citizen business enterprise which is required to obtain an FIAC, or which is operating under an FIAC or foreign business permit; or if such Member or his or her relative is employed by a business enterprise that will participate in the development of a project authorized pursuant to an FIAC or foreign business permit; or if such Member or his or her relative has an investment as defined at Section 102(j) of the Act in an FIAC applicant or a business enterprise which is operating under an FIAC or foreign business permit; or if such Member or his or her relative is an owner in whole or in part, of a business enterprise subject to a compliance action before the FIB.
- (c) No Member shall participate in any discussion or vote in any matter pending before the FIB, which involves a conflict of interest, although such a Member may be counted towards the quorum required by the Act and these regulations. A Member who believes he or she has an actual or potential conflict of interest shall disclose the existence and nature of such a conflict of interest to the entire FIB. Any Member who is uncertain as to whether a conflict of interest exists may request that the disinterested FIB Members resolve the question by a majority vote, after a full disclosure of pertinent facts.
- (d) Each Member shall refuse any money, gift(s) or any other benefit from any person, organization or business enterprise which is offered in connection with the discharge of his or her duties as a Member of the FIB. Each Member immediate shall disclose to the entire FIB any and all such offers at the next FIB meeting, including the identity of the offeror(s) and a description of the item(s) offered.
- (e) Each Member shall resist and refuse every temptation and outside pressure to use his or her position as a Member to benefit either himself or herself or any of his or her relatives.
- (f) Each Member shall base his or her official decisions upon all available facts in each situation and shall vote his or her honest conviction in every case unswayed by partisan bias. Each Member shall abide by and uphold the final decisions of the FIB.

- (g) Each Member shall recognize that deliberations of the FIB in executive sessions are not his or hers to release or discuss in public without the prior approval of the FIB by majority vote. Each Member therefore shall maintain the confidentiality of all FIB discussion held in executive sessions.
- (h) Each Member shall remember at all times that as an individual he or she has no legal authority to act as a Member outside the meetings of the FIB. Accordingly, Members shall not discuss the business of the FIB with anyone outside of the official meetings. Each Member shall take official actions only during the FIB's public sessions, except in those situations where the business being transacted or discussed is required to be closed to the public.
- (i) Nothing in this Part shall prevent a Member from cooperating fully with any investigation conducted by the Attorney General, the Special Prosecutor or any other duly constituted investigative authority.

## PART 2: FIB MEETING AND RECORDS

Section 1: *Schedule of Meetings.* The FIB shall meet on a regular basis to carry out its functions and responsibilities under the Act whenever required by the Chairman or the President, but in any event not less than once every month.

Section 2: *Notice of Meeting Agenda.* The Chairman shall provide all Members with written notice of any meeting agenda at least three (3) days in advance of such meeting, except that agenda items may be added on shorter written notice or telephone notice if an urgent situation arises. Except in cases of emergency, proposed agenda items must be submitted to the Chairman at least five (5) days in advance of the meeting. The notice shall specify the date, time, place and business to be considered at the meeting. The FIB may not take any final action with respect to a matter during a meeting unless that matter specifically is scheduled to be considered at that meeting, except in the case of an emergency. The determination of whether there is such an emergency shall be made in the sole discretion of the Chairman.

Section 3: *Attendance.* Each Member has a duty to inform the Executive Officer no later than 10:00 a.m. on the morning of the meeting whether he or she will attend the meeting. Meetings shall start promptly at 10:30, unless the written notice specifies otherwise. If any member fails to attend three regularly scheduled meetings in any year without excuse for the absence, this failure to attend shall be deemed "cause" for removal at the discretion of the President, pursuant to Act § 104(b).

Section 4: *Meeting Participation.* FIB meetings are open to the public except when the Members meet in executive session to discuss personnel matters, to discuss pending or potential litigation, or to receive legal advice. However, no one other than FIB Members, staff, and/or official guests are allowed to speak during such meetings, unless the FIB is conducting an open public hearing concerning a particular FIAC application. Otherwise, anyone wishing to appear as an official guest and discuss a specific item during an FIB meeting must submit a written request to the Chairman at the FIB's offices at least five (5) days prior to the meeting. The Chairman has the authority to control meeting agendas and may refuse to include items on the meeting agenda, or limit or refuse personal appearances in his discretion.

Section 5: *Meeting Place.* FIB meetings shall take place in the FIB office in Meyuns except where designated otherwise; if possible, the notice of meeting agenda shall specify the meeting place.

Section 6: *Quorum.* At any FIB meeting, the attendance of at least four (4) Members shall be required constitute a quorum for the transaction of business and the assents of at least three (3) Members shall be required for all decisions requiring a vote. If no quorum is present within 45 minutes of the announced starting time for the meeting, the meeting shall be adjourned until a quorum is present. If at any meeting a

quorum is present but neither the Chairman or the Vice-Chairman is in attendance, the Members shall elect by majority vote a temporary Chairman for purpose of that meeting only.

Section 7: *Voting*. Where all seven (7) Members are present and voting, the assents of at least four (4) Members shall be required for all decisions requiring a vote. In all circumstances, a tie vote shall constitute a lack of action by the FIB; no further action may be taken by the FIB on the particular matter unless and until the tie vote is resolved. The FIB may resolve a tie vote by holding subsequent votes on the matter at issue until a majority of the Members in attendance vote either to approve or deny the matter. Such subsequent votes may be held at the discretion of the Chairman or upon the petition of any three Members. Among other things, the FIB may conduct a public hearing or otherwise obtain additional information about the matter at issue prior to holding a subsequent vote. Voting at all FIB meetings may be either by acclamation or by unidentified ballot as the Members may determine at each meeting. Each Member shall have one vote only. Voting may not be by proxy.

Section 8: *Minutes*. The Executive Officer shall compile and distribute a draft copy of the minutes of the prior meeting to Members for their consideration and review. Action to approve the minutes of the previous meeting will take place at the next FIB meeting. Any proposed revision(s) to the draft minutes by a Member must be approved by majority vote. Once approved, the minutes shall be made public through the FIB's offices within one (1) working day.

Section 9: *Transaction of Business*. FIB actions are official only when taken at a meeting. Only the Chairman shall have the power to act in the name of the FIB unless another Member officially is given express authority by a majority vote of the FIB.

Section 10: *Record-keeping*. The FIB shall maintain accurate minutes of its proceedings, up-to-date records relating to FIAC applications and such other reports as are required by the Act. All such minutes, records, and reports shall be on file at the FIB offices.

Section 11: *Inspection of FIB Minutes, Records and Reports*. All FIB minutes, records shall be open to inspection by the public at the FIB offices, with the exception of: (1) minutes relating to executive sessions of the FIB; (2) records expressly deemed non-public by the FIB (such as proprietary information submitted under seal by FIAC applicants); and (3) and documents protected from disclosure by the work product rule, the attorney-client privilege or any other cognizable legal privilege.

Section 12: *Requests for Information*. Any person may request information from the FIB by mail at P.O. Box 1733, Koror, Palau 96940, by telephone at (680) 388-1135 or 2073, by facsimile machine at (680) 488-3722, or in person at the FIB office in Meyuns.

Section 13: *Compensation for Members*. Effective fiscal year 2004, members who are not state or national government employees shall be compensated at \$50 per day for attendance and participation at any meeting of the FIB, assuming a quorum is present. Members of the Board who are state or national government employees shall receive no compensation from the Board except when meetings are held outside regular working hours. All members shall be entitled to receive reasonable travel costs and per diem at established national government rates when traveling on the business of the Board.

### PART 3: FIB OFFICERS AND STAFF

Section 1: *Chairman and Vice-Chairman*. The Chairman and Vice-Chairman shall be elected on an annual basis by majority vote of the Members and shall only be removed from office upon the expiration of his or her term or by a majority vote of the Members. The annual election of Chairman and Vice-Chairman shall occur at the first regularly scheduled meeting of the FIB in January of each calendar year. The Chairman shall preside at all meetings and shall exercise and perform such other duties as may be from time to time assigned by the FIB or set forth by the Act or these regulations. In the absence or disability of the Chairman, the Vice-Chairman shall perform all duties and functions of the Chairman as well as such other duties as may be assigned by the FIB or set forth by the Act or these regulations. When so acting, the Vice-



Chairman shall have all the powers of the Chairman and shall be subject any restrictions placed upon the Chairman by the Act or these regulations.

Section 2: *Executive Officer and Staff.* The FIB shall employ an Executive Officer and such other staff as necessary to assist the FIB in carrying out its responsibilities under the Act. The Executive Officer shall endeavor to the best of his or her abilities to assist the FIB and all of its Members in the performance of their duties. To this end, the Executive Officer shall, among other things, assist the Chairman in providing the notice of meeting agenda to all members; taking minutes of all official FIB meetings and proceedings; maintaining an accurate record of such minutes; and, maintaining accurate and complete records of all FIAC applications and other FIB proceedings. The Executive Officer also shall respond to inquiries from interested investors and assist them on an as needed basis.

#### PART 4: FIB REPORTS AND BUDGET REQUEST

Section 1: *Quarterly Reports.* The FIB shall submit to the President and each chamber of the Olbiil Era Kelulau a quarterly report, which shall include but not be limited to the following information:

- (a) a summary of pending FIAC applications;
- (b) a description of the actions taken by the FIB with respect to any FIAC application; and
- (c) a summary of any periodic reports received by the FIB from non-citizen business enterprises.

These quarterly reports shall be submitted by the FIB to the President and each chamber of the Olbiil Era Kelulau on or about April 30, July 31, and October 31 of each calendar year. The annual report described in the next section and submitted on or about January 31 of each year shall constitute the quarterly report for that quarter.

Section 2: *Annual Reports.* The FIB shall submit to the President and each chamber of the Olbiil Era Kelulau an annual report, which shall include but not be limited to the following information:

- (a) a review of the quantitative and qualitative aspects of all FIAC applications received during the prior year;
- (b) a description of the progress made and the difficulties encountered in reviewing and considering the FIAC applications; and
- (c) a summary of any recommendations for improvement of the policy and procedural framework of the Act.

This annual report shall be submitted by the FIB to the President and each chamber of the Olbiil Era Kelulau on or about January 31 of each calendar year.

Section 3: *Annual Budget Request.* The Executive Officer shall prepare a proposed Annual Budget Request and submit it to the FIB for its consideration and approval. Once approved, the Chairman shall submit the Annual Budget Request to the President of the Republic for inclusion in the Republic's Unified Budget to the Olbiil Era Kelulau.

The foregoing revised regulations implementing the Foreign Investment Act hereby were **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by the **FOREIGN INVESTMENT BOARD:**

\_\_\_\_\_  
Alonso Joseph, Chairman

**APPROVED:** January \_\_\_\_\_ 2005

\_\_\_\_\_  
Tommy E. Remengesau  
President of the Republic of Palau